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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. 5 OF 2014
IN

WRIT PETITION (CIVIL) NO. 833 OF 2013

IN THE MATTER OF:

Aruna Roy & Anr.

...Petitioners

Versus

Union of India & Ors.

...Respondents

AND IN THE MATTER OF:

Rajeev Chandrasekhar

S/o Air Cdre. M.K. Chandrasekhar (Retd.)

Residing at: 211, North Avenue,

New Delhi - 110011

...Applicant

APPLICATION FOR IMPLEADMENT

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND

HIS HON'BLE COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPLICANT/PETITIONER
ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. This present application (the "**Application**") for impleadment in the abovementioned Writ Petition (C)

No. 833 of 2013 (the "**Writ Petition**"), is being filed by the Applicant above named seeking a writ and/or appropriate directions and orders against the Respondents, restraining them from implementing the UID/Aadhaar Scheme in its present form as being in violation of the fundamental rights of the citizens.

2. It is respectfully submitted that at present six petitions are pending before this Hon'ble Court connected with the Writ Petition in which various grounds have been elaborated on which the UID/Aadhaar Scheme is assailed. The Applicant craves leave of this Hon'ble Court to be allowed to be impleaded and be heard along with the Petitioners in these pending cases, such that this Court may have a comprehensive understanding of the malice in the UID/Aadhaar Scheme rendering it unsustainable under the scheme of the Constitution of India.

BRIEF FACTS ABOUT THE APPLICANT

3. The Applicant herein is a citizen of India and has been an independent Member of the Rajya Sabha, since May 2006. The Applicant was elected to the Rajya Sabha in 2006 and once again, re-elected unopposed in 2012.

The Applicant holds a Bachelor's degree in Electrical Engineering from the Manipal Institute of Technology, Mangalore University, Karnataka; a Master's Degree in Computer Science from Illinois Institute of Technology, Chicago (which has also recognised him as a distinguished Alumnus); and has attended Management Programmes at Harvard University, Boston. It must be noted herein that prior to being elected to the Parliament, he founded BPL Mobile, and was one of the pioneers in developing India's first and largest greenfield telecom infrastructure. BPL Mobile had invested in and built world-class telecom infrastructure in the metropolis of Mumbai and the circles of Maharashtra, Tamil Nadu and Kerala and laid the foundation of the telecom revolution in India. The Applicant is widely recognised for his significant role in the development of the now vibrant telecom sector, and his expertise in relation to the complexities regarding the techno-economic and regulatory issues facing the sector since 1993. The Applicant presently holds no stake in the telecom sector.

4. Apart from being an industry leader in the telecom domain, the Applicant was one of the youngest national

Presidents of the Federation of Indian Chambers of Commerce and Industry (FICCI), India's apex industrial body. As the President of FICCI, the Applicant was responsible for initiating wide ranging reforms in multiple industry verticals. Since his election to the Upper House of the Parliament in 2006, the Applicant in his capacity as an independent Member of the House, has raised various issues of concern relating to technology, privacy and internet freedoms. The Applicant has consistently fought for transparency in policies and processes pertaining to the telecom sector and in particular, has been instrumental in ensuring transparency in the process of distribution of government largesse in the telecom sector.

5. The Applicant further has championed the cause of freedom of speech and expression of all classes of citizens, as a representative of the people, as a member of the political class who believes in the right of political dissent and right to express one's views, and as an active user of technology and the various modes of expression afforded by the same. The Applicant has initiated multiple public interest actions in the High Court of Karnataka and in the Supreme Court of India

on a wide range of issues including land – both public and government, rights of local communities to public infrastructure; right to privacy and the right to freedom of expression vis-a-vis the internet and intrusive regulation of the internet by the State.

6. As an active Member of Parliament, who is also a member of the Standing Committee on Finance, the Applicant has raised issues with respect to the UID/Aadhaar Scheme at various levels. The Applicant has at various times exchanged correspondence with the Hon'ble Prime Minister, the Hon'ble Finance Minister and the Chairman, Standing Committee on Finance against the UID/Aadhaar Scheme and its viability as a means of financial inclusion, highlighting that the UID Scheme shall involve significant additional spending and increase in costs to consumers. Further, upon the Reserve Bank of India issuing a Circular stipulating Banks to introduce additional biometric facilities in all new credit card swipe machines and Automated Teller Machines (ATMs), the Applicant had issued a letter to the Governor of the Reserve Bank of India raising questions regarding the tenability of such an

enterprise. The true copies of the letter dated September 20, 2013 addressed to the Hon'ble Prime Minister and copy of letter dated October 10, 2013 addressed to the Governor of the Reserve Bank of India are annexed hereto and marked as Annexure A-1 (At page 40 to 41) and Annexure A-2 (At page 42 to 43) respectively.

7. **The brief facts leading to the present Application are as stated hereinbelow:**

- (I) The Aadhaar or the UID Scheme was initially conceived in 2006 by the Planning Commission as a project to provide unique identification number for each resident of the country. When in March, 2006, the Department of Information Technology, Ministry of Communication & Information Technology, gave its approval for the project which was then titled "Unique Identification for BPL families", the process had begun on its implementation. The same year in July, 2006, a Processes Committee was also set up for updation, modification of this Project, who had submitted a report - "Strategic Vision on the UID Project" - in which it was suggested that the UID

authority should be set up under the aegis of the Planning Commission by an executive order.

(II) Subsequently, on December 4, 2006, an Empowered Group of Ministers (EGoM) was set up to collate two schemes, viz., the National Population Register under the Citizenship Act, 1955 and the Unique Identification Number Project of the Department of Information Technology. The EGoM recognised the necessity of such a project irrespective of whether such a database would be constructed on existing records such as the voters' list or upon *de novo* collection of data. It had also been recognised by the EGoM that it was important to have an institutional mechanism to 'own' such a database.

(III) At the EGoM's meeting on January 28, 2008 it was approved that a Unique Identification Authority of India ("**UIDAI**") would be constituted under the Planning Commission. Thereafter in August 2008, when the Planning Commission had placed a detailed proposal for setting up the UIDAI, the EGoM referred that matter to a

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Committee of Secretaries (CoS) for its recommendations. Pursuant to the CoS' recommendations, the EGoM decided in its meeting on November 4, 2008 *inter alia* that the UIDAI may be initially notified as an Executive Authority anchored in the Planning Commission, and that it could be given statutory backing at a subsequent point in time. The EGoM also decided that the UIDAI may limit its activities to the creation of the initial database from the electoral roll data, however, it would be within the authority of the UIDAI to issue instructions to agencies to undertake creation of databases to ensure standardization of data element.

- (IV) Pursuant to the decision of the EGoM, the Planning Commission notified the UIDAI on January 28, 2009, as an attached office under the aegis of the Planning Commission. The notification vested the UIDAI with the responsibility to lay down plan and policies to implement the UID Scheme and that it shall own and operate the UID database and be responsible for its updation and maintenance.

- (V) The Scheme as it now stands, aims at providing a unique number to all residents of India on a voluntary basis. The Aadhaar is a 12 digit randomly generated unique number for each resident which would be stored in a centralised database and would be linked to biometric and demographic data of such individuals. The biometric information includes a photograph, a scan of all ten fingerprints and of both the eyes of an individual, while demographic data includes name, age, gender, address and relationship details in case of minors.
- (VI) The Government wishes to integrate the UID Scheme with the delivery mechanism of the various welfare programmes which it believes is going to bring about a transformational change in making available the benefits of the welfare schemes to the true and correct beneficiaries under these welfare programmes.
- (VII) The Government introduced the "National Identification Authority of India Bill, 2010" in the

Rajya Sabha on December 3, 2010, for the same purpose for which the executive order dated January 28, 2009 was notified. Thereafter the same had been referred to the Parliamentary Standing Committee, Finance which returned the Bill with the dissent noted by 4 of the members of the Committee. Pursuant to the Standing Committee's submission of its report on December 11, 2011, the process of issuance of Aadhaar/UID numbers were stopped from February, 2012. However, again from August 15, 2012 the Government had resumed the second phase of enrolment for issuance of UID numbers.

8. It is most respectfully submitted that the Citizenship Act, 1955, vide section 14-A makes a provision for issuance of National Identity Cards to all citizens. The provision is salutary inasmuch as it distinguishes between citizens and non-citizens and issuance of such identity document is predicated upon an individual being a citizen of this country. However, the UID/Aadhaar Scheme in its present form, as also in the Bill introduced in the Parliament to this effect, fails to draw this distinction between citizens and non-

citizens and proceeds to provide the UID Number to every 'resident' which paves the path for abuse since the UID Number is a proof of both address and identity, thereby putting the entire citizenry to a serious security threat.

9. It is most respectfully submitted that the Respondents introduced the UID/Aadhaar Scheme purportedly under the powers vested in the Respondents vide Article 73 of the Constitution of India. The Applicant respectfully submits that the legislative field which the notification dated January 28, 2009, establishing the UIDAI traverses, is already covered by section 14-A of the Citizenship Act, 1955. It is submitted that legislative power under Article 73 of the Constitution can only be exercised to fill in any gaps in law or where there exists a vacuum in legislation, Thus once the field is occupied by a statutory rule, the Executive would be compelled to abide by that Act or Rule and it could not in the exercise of executive power under Article 73 of the Constitution ignore such a statutory provision or act in contravention thereof.

10. The Applicant further submits that the UID/Aadhaar Scheme fails as a plan to become a panacea for the malady of leakage in the Public Distribution System and other welfare programmes of the State, contrary to what it has been projected as by the Respondents. While this Scheme envisages plugging the leaks in the system, it merely establishes a cost inefficient system and brings about an expensive substitute at the cost of taxpayers' money which utilises expensive technological solutions but fails to solve the problem.
11. It is further submitted that although the UID/Aadhaar Scheme is sought to be brought about by the Respondents to provide identification to each citizen, in the garb of the same, sensitive biometric data is being collected infringing the right to privacy of the citizen. Furthermore, it is submitted that collection of such sensitive data without there being in place any form of legal framework to sanction the exercise, statutory limitations on when the data can be used, or provisions for a secure manner of storage exposes the citizenry to enormous security risks. It is further pertinent to note herein that the same paves the path for the State to profile the citizenry at an unforeseen scale, vesting in

the Respondents sensitive personal information of individuals. It is further submitted that in the absence of any clarity on the contours of the application of the Aadhaar number, it remains unclear with respect to who can demand the UID number to be quoted and the agencies which may make use of the same affecting the fundamental rights of the citizens.

12. The UID/Aadhaar Scheme, with a centralised database at its core, grants a disproportionate/unbridled amount of control to a single governmental entity that collects and stores the information rendering the entire Scheme arbitrary and violative of the Constitutional provisions.
13. It is most respectfully submitted that upon the UID Number becoming ubiquitous, organisations within the Government such as the Intelligence Bureau, Research and Analysis Wing, National Intelligence Grid, Multi Agency Centre and Central Monitoring System, that operate outside legislative control and are exempted from the obligation of disclosure under the Right to Information Act will be able to track individuals on a real time basis which will increase the

scope of surveillance and thereby violate the rights vested in an individual under Articles 14 and 21 of the Constitution.

14. It is respectfully submitted that there is active concealment by the Respondents of the potential harm that may visit the person as a consequence of parting with such information. The citizens are exposed to security risks of which they are uninformed and are also unaware of the commercial value of the biometric data that they are being forced to part with.
15. It is submitted that the UIDAI's method of collecting personal data is irresponsible. It has been reported that data of several lakhs of people have been 'lost' in Delhi, Hyderabad and Mumbai and people have been simply asked to re-enrol. Additionally, there is no supervision of the enrolling agencies and no checks are enforced on the scanners, computers and devices like USB drives that they use, making it very simple for such data to be stolen.
16. It is further submitted that the UID Scheme is a burden on the exchequer, an enterprise which is

estimated at costing a mammoth Rs. 12,398 crore. However the Government fails to make use and synchronise existing such databases and make the Scheme cost-effective. For example, each professional body (eg., Bar Council, Institute of Chartered Accountants of India, etc.) or public sector undertaking or State Governments shall already be maintaining such databases of demographic details of its employees. Furthermore other identity documents such as passports, driving licenses etc also maintain such databases and it would have been more efficient a Scheme to have proceeded from the integration of such data, and thereafter proceeding to integrate similar records maintained by private organisations.

17. The Applicant respectfully submits that the Respondents intend to link all social welfare schemes with the UID/Aadhaar Number. Since the existing methods of implementation of welfare schemes are sought to be dismantled by the Respondents, a large segment of the population shall be deprived of their basic essential rights, including their Right to Food, Right to Education, Right to Employment, employment under the MGNREGA Scheme, Pensions, etc. Since the

Aadhaar number is envisioned for facilitating an unspecified wide range of activities such as from bank transactions to the purchase of goods and services, etc., it effectively robs an individual of the scope to opt-out of the Scheme. Harsh disqualifications attaches to non-enrolment by being excluded from various welfare schemes of the Government, which in turn makes the project effectively mandatory, thus compelling the citizenry to compulsorily part with sensitive biometric data. This compulsion to part with such data undermines the human dignity of individuals. A large part of the citizenry relies on these welfare schemes of the Government as a means to sustain their lives and livelihoods and would be deprived of their Constitutional rights if excluded.

18. It is respectfully submitted that for the UID Scheme to succeed as the Respondents envisage there ought to be a complete 100% coverage achieved under it. However by the Government's own admission, the rate of implementation of the project is abysmally low, so much so that according to estimates only 600 million individuals shall be enrolled by the end of 2014. Thus coupled with the intended mandatory linking of social

welfare measures with the UID/Aadhaar number, this Scheme shall cause social exclusion of those from the social welfare net whose lives and livelihoods depend on it.

19. It is respectfully submitted that the UID/Aadhaar Scheme is premised on certain assumptions which are untenable in the current Indian scenario. The Respondents professedly intends to link the Aadhaar number to disbursal of direct cash benefits to the target segment. However the banking system has not percolated evenly in the country and is grossly inadequate to be mandatorily linked with the disbursal of such welfare measures. According to the Reserve Bank of India, there are less than 32,000 rural banks in the country whereas there exists some 600,000 villages; which demonstrates the abysmal state of the banking system in the country with which the UID Number is sought to be linked. It is submitted that to overcome this problem, business correspondents are sought to be introduced to reach the money, which in turn raises concerns about the creation of middlemen and aggravates the very problem which it aims at resolving.

20. The Applicant most respectfully submits that the UID Scheme at present is being handled by private bodies, which by their very nature are motivated by profit alone. The flawed system of implementation of the Scheme links such profit for these private bodies to merely the number of registrations that can be ensured under the Scheme, without any system of checks and balances to ensure that vulnerable disadvantaged groups are brought under its cover. The UID Scheme is misconceived inasmuch as it fails to percolate vulnerable/disadvantaged target groups who could be benefitting from such an identification programme.
21. It is respectfully submitted that the Respondents seek to enforce the UID/Aadhaar Scheme not only to disadvantaged persons who require some authentic identification document before receiving benefits but also projects this Scheme as necessary with regard to various public as well as private sector service providers, associating severe disqualifications with the failure to produce a UID Number. Thus the element of coercion is palpably ubiquitous in the entire project,

even as the Respondents continue to maintain that the Scheme is entirely voluntary.

22. The Applicant humbly submits that the Respondents are deploying private entities for enrolling individuals under the UID/Aadhaar Scheme, when there are no governing laws or rules to hold these agencies accountable for their actions or lapses, if any, which might occur in the process. Although these enrolment agencies are in complete possession of the sensitive data, they have no legal liability for any theft, fraud, crime and compromise of any security or privacy. Inadequate data protection mechanism exposes such sensitive data of the citizenry to abuse and misuse and the Respondents fail to provide any safeguard in this regard. It is further submitted that the Scheme allows particular private companies to hold large stakes in the process which locks the Government into dependent relationship with few companies or producers or service providers.

23. The Applicant respectfully submits that recent news reports from leading agencies raise the concern of security integrity of the country, especially since the

Respondents are involving private bodies funded by foreign intelligence agencies to process the highly sensitive biometric data under the UID/Aadhaar Scheme. In November, 2013, Max Schireson, Chief Executive of a technology start-up from New York called MongoDB, is reported to have negotiated a contract with the UIDAI to help capture and analyse the data collected under the UID Scheme. It is submitted that MongoDB is partially funded by the not-for-profit venture capital arm of the Central Intelligence Agency (CIA) named In-Q-Tel (IQT). It cannot be ignored that in its history prior to 1999, IQT existed as a division of CIA Directorate of Science and Technology and even thereafter when it was chartered it continued to be funded by the CIA. Furthermore, UIDAI has also entered into contracts with the Indian subsidiary of a French company, called Sagem Morpho. It cannot be countenanced that Sagem Morpho is a part of the French defence company Safran, in which the French Government holds about 30.5 percent shares. Considering the recent revelations of whistleblowers like Edward Snowden that foreign governments and organisations such as the United States National Security Agency routinely snoops on

sensitive communications in this country, in the absence of any data protection mechanism or any other statutory safeguard put into place, this Scheme seriously threatens and prejudices the security and integrity of the nation in the name of providing identification to all its citizens.

24. The Applicant respectfully submits that the Aadhaar Scheme serves no useful purpose when it is based on other identity documents or the 'introducer' system because they are not subject to audit. The criteria laid down for the eligibility of being an 'introducer' does not require that individual to know the person he is introducing. That in effect exposes every enrolled individual to serious threats of identity theft. Furthermore by linking property transactions, marriages, etc. with Aadhaar numbers, the Respondents have exposed all registered persons to transactions that can be conducted in their absence, thereby paving the path for large scale organised identity theft, fraud and crime.

25. The Applicant submits that the UID/Aadhaar Scheme being essentially for all 'residents' of the country, in the

absence of a statutory framework of safeguards, even illegal immigrants residing in India would be benefitting under it. It opens the possibility of flagrant abuse in the process of enrolment as a voter since the Aadhaar number acts as a proof of identity as well as address, even when this Number can be issued to non-citizens. The Scheme thus poses as a serious threat to the security and integrity of the country.

26. The Applicant submits that the basis of the UID/Aadhaar Scheme leans on biometric reliability when the efficiency and accuracy of the same had been questioned. It is submitted that arguments in support of such biometric data collection is based on the flawed premise that such schemes prevent identity frauds. Identity and authentication systems based on biometrics are weak because once these indicators are compromised they cannot be reissued like signatures or passwords. The experience of other countries in dealing in biometric data and its unreliability is instructive, which the Respondents have overlooked in their eagerness to implement this deeply flawed Scheme.

27. It is most respectfully submitted that the present Scheme renders no clarity on its ultimate purpose and the contours of its operation and use, the State is invested with unbridled arbitrary powers without any form of checks and balances being infused in the system.
28. It is further submitted that even in other jurisdictions such as the United States of America (where biometric information is not collected or stored to provide Social Security Numbers), statutory protections as to the disclosure and use of the Social Security Number has been deemed necessary for safeguarding the rights and interests of the citizenry. The Social Security Number Protection Act, 2010 has been specifically enacted in the United States which prohibits Federal, State and local agencies from displaying the Social Security Number or a part thereof on any cheque issued by these government agencies. Furthermore this statute also seeks to control and regulate the access to Social Security Numbers, e.g., it is prohibited that any Federal, State or local agency shall employ or enter into a contract for use or employment of prisoners in any capacity that would allow them access to Social

Security Numbers of other individuals. However, the Respondents herein have failed to delineate any such protection or safeguard to the citizens as regards their highly sensitive data so collected under this Scheme.

29. For the reasons aforementioned, the Applicant seeks to implead itself in the instant Writ Petition to challenge the UID/Aadhaar Scheme on the following grounds which are without prejudice to one other. The Applicant seeks leave of this Hon'ble Court to alter, add, amend the grounds as mentioned in the present application:

GROUND

- A. That the UID Scheme violates the Fundamental Right of privacy of a citizen under Article 21 of the Constitution of India since biometric and demographic information is collected under the Scheme as a mandatory condition precedent, while the safeguard mechanisms provided are wholly inadequate, either in practice or in a statutory framework to ensure the security of such sensitive data. It is significant to note herein that the enrolment agencies, sub-registrars, registrars and UIDAI are in full possession of all data

but have no legal liability for any theft, fraud, crime and compromise of any security or privacy. In the garb of providing identification to each citizen, the State is collecting sensitive data from its citizens, thereby infringing the Right to Privacy.

- B. That the Respondents are clandestinely outsourcing the processing of sensitive biometric data collected under the UID/Aadhaar Scheme arbitrarily without proper consultation, investigation, audit, evaluation or impact assessment jeopardises the security interest of the country and thus exposing the entire citizenry to grave security risks. It is submitted that such reckless exercise of power by the Respondents is violative of Articles 14 and 21 of the Constitution of India.
- C. That since there is no legal/statutory framework to the entire Scheme, the UID Project vests in the State an unbridled power to profile its citizens, which in turn poses a grave threat of creation of fake identities. It is most respectfully submitted that such a Scheme violates Fundamental Rights because of lack of proper data protection. Furthermore it is in the very nature of the UID Scheme that it paves the path for tagging,

tracking and surveillance and such possible monitoring of an individual shall lead to the infringement of the right to privacy of an individual under Article 21 of the Constitution. Such unbridled arbitrary powers vesting with the Respondents without any form of checks being incorporated therein renders the Scheme vulnerable to becoming a 'Function creep' and strikes at the very nature of responsible governance that Article 14 of the Constitution guarantees.

- D. That the UID/Aadhaar Scheme, in the absence of a statutory mechanism, fails to incorporate any checks and balances in the implementation of the Scheme to safeguard interests of the individuals enrolled there under, especially since India lacks any data protection mechanism for preserving and protecting the data collected under this Scheme. It is pertinent to note herein that even in foreign jurisdictions, such biometric profiling has been deemed to be incompatible with constitutional rights such as right of privacy and the presumption of innocence. In this regard, it is important to note herein that the French Constitutional Council (*Conseil Constitutionnel*) vide Decision No. 2012-652 DC, dated March 22, 2012, had

struck down as unconstitutional, a similar measure adopted by the French National Assembly, holding that such violation of the right of privacy "cannot be considered as proportional to the meant purpose". It is further submitted that the notification dated January 28, 2009, fails to delineate the conditions under which such data may be used or shared, *albeit* the Respondents contemplating widespread data sharing under this endeavour. Such arbitrary exercise of power is violative of Article 14 of the Constitution of India.

E. That the impugned action of the Respondents in bringing about the UID/Aadhaar Scheme, thereby facilitating and permitting private entities to gather highly sensitive personal biometric information (of tremendous commercial value) without any technological or legal safeguards and without sufficient State control over such information is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

F. That the UID/Aadhaar Scheme falsely bases its legitimacy upon the reliability of biometric data *albeit* there being no comprehensive study conducted on its

efficacy and implementation in this country. It is humbly submitted that experience in foreign jurisdictions informs one of the vagaries of biometric identification inasmuch as both fingerprints and iris scans are unreliable and subject to an individual's aging process, medical conditions, stress and occupational factors. To implement such an unproven mechanism as a mandatory Scheme is arbitrary and thus in violation of Article 14 of the Constitution of India.

- G. That the UID/Aadhaar Scheme being a *de facto* mandatory enterprise, individuals are robbed of their essential civil liberties in the form of privacy or lack of an effective alternative of opting out of this programme. Furthermore, severe disqualification in the form of denial of welfare benefits such as those of right to employment under the MGNREGA or right to food under the Public Distribution System or right to education for failure to possess the UID Number implies a denial of essential fundamental rights thereby being violative of Articles 14, 21 and 21A of the Constitution of India.

- H. That the existing public distribution system with its wide network of shops, outlets, warehouses and infrastructure, is sought to be simultaneously dismantled by the Respondents without having sufficiently tested the biometric technology sought to be employed, the UID/Aadhaar Scheme is arbitrary and violative of Article 14 of the Constitution of India.
- I. That the harsh disqualification attached to non-enrolment by being excluded from various welfare schemes of the Government, which in turn make the project effectively mandatory, thus compelling the citizenry to compulsorily part with sensitive biometric data, which is unconstitutional. It is most respectfully submitted that even in the United States of America, where a similar scheme is in place under the Social Security Act (although no biometric data is collected therein), Section 7 of the Privacy Act, 1974, mandates that it shall be unlawful for any Federal, State or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number. Thus in the absence of any legislative protection the UID/Aadhaar Scheme increases the

chance of exclusion, depriving the citizens not enrolled under the Scheme from welfare benefits that sustain their lives thereby violating their Fundamental Rights under Articles 14 and 21 of the Constitution.

J. That contrary to the claim of the government that the UID Scheme is based on the consent of the individual getting enrolled, such consent is gathered out of coercion or else such consent is not informed consent. Coercion stems from the fact that very harsh disqualification shall attach for non-enrolment (in the form of being deprived of State assistances). Also, it cannot be called 'informed consent' because there is active concealment by the UIDAI of the potential harm that may visit a person from parting with personal biometric data. Hence the UID Scheme is violative of the Fundamental Right under Article 21 of the Constitution.

K. That despite the interim order of this Court dated 23.09.2013, in the connected Writ Petition No. 494 of 2012, captioned as **Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India**, stipulating that "no person

should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory", various Government agencies and State Governments continue to enforce the requirement of an UID/Aadhaar card for payment of wages or maternity benefits or other government scheme entitlements. Hence the Scheme stands not only in blatant violation of the order of this Hon'ble Court but also against the Constitutional guarantee embodied in Article 21 for depriving the citizens of their rights of life and livelihood.

- L. That the UID/Aadhaar Scheme fails to coordinate the various agencies already collecting information (such as National Population Registrar, MGNREGS, BPL census, UIDAI, Bank Smart Cards etc.) thereby causing incurrence of arbitrary expenditure of tax payers' money even as databases are being duplicated leading to a waste of financial resources. That the Ministry of Finance (Department of Expenditure) submitted to the same effect before the Parliamentary Standing Committee goes to show the extreme highhandedness of the Respondents in arbitrarily bringing UID Scheme into effect under an executive

fiat. Therefore the same is in violation of Article 14 of the Constitution for being an arbitrary exercise of power.

M. That despite there being serious differences of opinion on the feasibility and efficacy of the UID/Aadhaar Scheme between various agencies of the Government, the Respondents omitted to pay heed to any such objections and proceeded unilaterally to implement the UID Scheme. It is significant that the Ministry of Home Affairs expressed their concerns over national security, efficacy of the introducer system and involvement of a large number of private entities for the process of enrolment before the Standing Committee. Similarly, the National Informatics Centre pointed out the weaknesses in the UID Scheme over the security of the data collected and the privacy of those enrolled under it. Even the Ministry of Planning had expressed its reservations over the merits and functioning of the UIDAI and the biometric information of iris scans. However, overlooking the objections raised by the various agencies and in a completely arbitrary exercise of power under Article 73 the Respondents rolled out

the UID/Aadhaar Scheme, in violation of Article 14 of the Constitution of India.

- N. That the provision of section 14A of the Citizenship Act, 1955 read with Citizenship (Registration of Citizens and issue of National Identification Cards) Rules, 2003 is identical in subject matter to the UID/Aadhaar Scheme and the notification dated January 28, 2009. It is submitted that exercise of executive power under Article 73 of the Constitution is impermissible when the legislative field is already occupied by a Statute or Rules.
- O. For that it has been held by a Constitution Bench of this Hon'ble Court in the matter of **B.N. Nagarajan v. State of Mysore**, AIR 1966 SC 1942, that once there is a statutory rule on a matter the executive must not resort to executive power under Article 73/162 of the Constitution in ignorance or in contravention of such a rule.
- P. That any Scheme that adversely affects Fundamental Rights of a citizen must be brought about by a law enacted by the Legislature. Any such scheme

purported to be brought about under Article 73 of the Constitution thus violates the scheme under the Constitution of India. This Hon'ble Court had held in the case of ***Ram Jawaya Kapur v. State of Punjab***, **AIR 1955 SC 549**, that to encroach upon private rights in order to carry on business, a specific legislation sanctioning such a course would have to be passed. It has further been held that in the absence of a statute if a notification or an executive act violates a Fundamental Right then the same is unconstitutional. That furthermore, this Hon'ble Court had held in the case of ***Mohd. Yasin v. Town Area Committee, Jalalabad***, **AIR 1952 SC 115**, that even bye-laws cannot be said to constitute a valid law to impose a restriction on a Fundamental Right. Therefore the UID/Aadhaar Scheme, inasmuch as it violates a fundamental right and is brought about by merely an executive notification is in violation of the Constitution of India.

- Q. That even though the Government purports to bring about the UID Scheme under the power vested by Art.73 of the Constitution, it disregards the proviso to Art.73, whereby matters enlisted in List III in the

Seventh Schedule cannot be acted upon by the Union Government. The UIDAI pertains to Entry 20 (Economic and Social Planning), Entry 23 (Social Security) and Entry 45 (Inquiries and statistics for the purposes of any matters specified in List II or List III) of List III. Hence the UID Scheme notified by the Government is *de hors* constitutional competence.

- R. That since the Bill pertaining to the UID Scheme is pending before the Parliament and a Standing Committee had expressed reservations against it, to implement the same scheme under the garb of Art.73 would amount to a 'fraud on the Constitution'. It is submitted that the Parliamentary Standing Committee on Finance had submitted three Reports, viz., 53rd Report dated 24.04.2012, 62nd Report dated 06.12.2012 and 69th Report dated 22.04.2013 expressing grave concerns and disapproval of the implementation of the UID/Aadhaar Scheme. Under such circumstances, to give a complete go by to the Parliamentary process and to implement the Scheme under the garb of Article 73 is a colourable exercise of power. This Hon'ble Court had held in ***D.C. Wadhwa v. State of Bihar***, (1987) 1 SCC 378 that

circumvention of the legislature to avoid debate and discussion on a policy or to make the legislative power redundant is anathema to the scheme of the Constitution.

- S. That the UIDAI as has been set up is an unaccountable independent body and the Scheme attempts to privatise fundamental rights and entitlements. Besides, the Planning Commission under whose aegis the UIDAI is setup lacks any mandate to undertake such programs. Furthermore the UID Scheme delegates essential Government function to private parties, and in the absence of a legislative framework ceding dominion over personal data shall severely prejudice an individual. Such abdication of essential State function is unconstitutional.

PRAYER

It is, therefore humbly prayed that this Hon'ble Court may graciously be pleased to:

- i. Allow this Application and permit the Applicant to be impleaded as respondent in the aforementioned matter being Writ Petition (C) No. 833 of 2013;

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ii. Allow the Applicant to file detailed pleadings supporting the stand taken herein;

iii. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT, AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)
ADVOCATE FOR THE APPLICANT

Drawn on: 10.3.2014
Filed on: 11.3.2014
New Delhi

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A NO. OF 2013

IN

WRIT PETITION (C) NO. 833 of 2013

IN THE MATTER OF:

ARUNA ROY & ANR.

...PETITIONERS

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

AND IN THE MATTER OF:

RAJEEV CHANDRASEKHAR

...APPLICANT

AFFIDAVIT

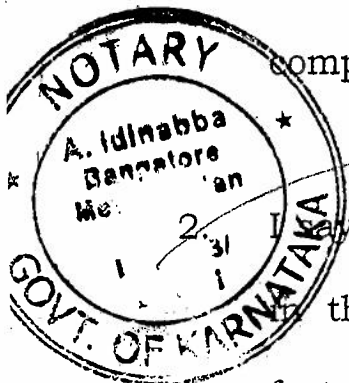
I, Rajeev Chandrasekhar, son of Air Cdre. M.K. Chandrasekhar (Retd.), aged about 49 years, resident of 211, North Avenue, New Delhi 110011, presently in Bangalore, do hereby solemnly affirm and state as under:

1. That I am Applicant in the abovementioned Writ Petition and I am well conversant with the facts and circumstances of the present case and I am fully

competent to depose by way of the present Affidavit.

I declare that I have read and understood the facts stated in the accompanying applications and say that the facts stated therein are true to my knowledge.

Rajeev



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3. I say that the averment of facts stated hereinabove are true to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Asehan
DEPONENT

VERIFICATION

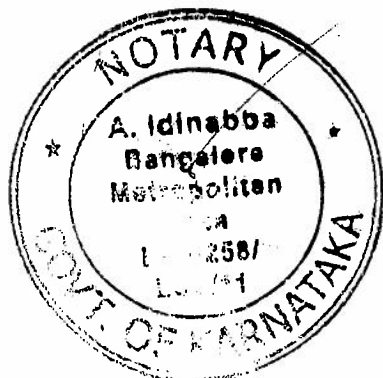
I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at *Bangalore*, on this the *10th* day of March, 2014.

Asehan
DEPONENT

SWORN TO BEFORE ME

10 2014
SWORN TO BEFORE ME
A. IDINABBA
ADVOCATE AND NOTARY
No. 2282/E, HAL 2nd Stage,
18th Main Road, Indiranagar
BANGALORE - 560 008
Phone : 25275367



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Date	10 2014



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Anne. A1

RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Finance
Member of Consultative Committee on Finance
Member of Parliamentary Forum on Youth
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District
Vice Chairman, National Military Memorial Management Trust, Bangalore

20 September, 2013

Respected Prime Minister,

I would like to draw your attention to the implications of the RBI's recent proposal for banks to introduce additional facilities in all new credit card swipe (Point of Sales or PoS) machines and Automated Teller Machines (ATMs) for providing a mechanism for Aadhaar authentication using biometrics.

At the outset, starting such a massive programme to link bank accounts to the Aadhaar database will involve huge, additional costs that will eventually be passed on to customers / bank depositors.

The country currently has over 1.2 lakh ATMs and 10.30 lakh credit card swipe / PoS machines. Over 2 lakh PoS machines and around 20,000 ATMs are expected to be added by next year. All these new biometric-based machines will need to have facilities to scan biometrics, which will significantly increase investment costs -- for both installation and operations. Also, traditional phone lines may not work to send scanned fingerprint images for verification. This will pose an added expenditure for banks as the new machines will require the equivalent of 3G data speeds to transmit biometric data. So far, Aadhaar has made no mention of who will bear the cost of biometric PoS readers and ATMs.

Further, the RBI appears to have adopted a combination of 'chip and PIN' authentication for existing customers and biometric checks for unbanked cardholders. The real challenge is, however, in the acceptance devices. The procurement of new equipment to facilitate these biometric checks have huge cost implications on banks, who will ultimately transfer the burden on to customers. Banks will ultimately have to divert funds for developing their businesses to facilitate new infrastructure. Banks, who are already reeling under the burden of high operating costs, and customers, who are already burdened by the array of "convenience charges" imposed by banks for online transfers, SMS-alerts etc., are understandably wary of the implications of the RBI's latest proposal.

While there is a need for a much stronger authentication mechanism and customer security -- such a proposal, without adequate capital for such massive infrastructure requirements, will result in a high cost burden for the entire banking system, which will ultimately have to be borne by the hundreds of millions of account holders in the country.

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Additionally, even though the Aadhaar-based authentication was launched by several banks through biometric ATMs between 2004 and 2007, it did not work and its implementation has so far proved costly for the banks as well as the customers. The ATMs could not authenticate the biometrics of many underprivileged citizens, and therefore, had to be discarded. Therefore, there is a need to conduct adequate feasibility tests before such a proposal is implemented.

The RBI Governor, Raghuram Rajan, has emphasized the use of Aadhaar in banking and building individual credit histories. However, in our efforts at achieving financial inclusion, it is unacceptable that these create additional costs to be borne by consumers of banking services.

Public policy towards financial inclusion should be devised intelligently – with objectives of lower banking costs and increased access for consumers – and not using ill-conceived, brute force methods involving significant additional spending and increase in costs to consumers, and please make no mistake, these costs will be passed on by banks to consumers.

I request you to consider the above and have a relook at this proposal – in the interest of the millions of banking consumers – present and future.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Dr. Manmohan Singh
Hon'ble Prime Minister
Government of India
New Delhi

True copy



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Amc. A2

RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Finance
Member of Consultative Committee on Finance
Member of Parliamentary Forum on Youth
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District
Vice Chairman, National Military Memorial Management Trust, Bangalore

10 October, 2013

Dear Dr. Rajan,

Sub: Cost of banking to consumers

I write to you with regard to the RBI's recent circular on 02 September, 2013 stipulating banks to introduce additional facilities in all new credit card swipe (Point of Sales or PoS) machines and Automated Teller Machines (ATMs) for providing a mechanism for Aadhaar authentication using biometrics.

While the intended purpose of greater financial inclusion is honorable, starting such a massive programme to link bank accounts to the Aadhar database will involve huge, additional costs. These will eventually be passed on to customers / bank depositors.

The country currently has over 1.2 lakh ATMs and 10.30 lakh credit card swipe / PoS machines. Over 2 lakh PoS machines and around 20,000 ATMs are expected to be added by next year. All these new biometric-based machines will need to have facilities to scan biometrics, which will significantly increase investment costs – for both installation and operations. Additionally, it has been reported that traditional phone lines may not work to send scanned fingerprint images for verification. This will pose an added expenditure for banks as the new machines will require the equivalent of 3G data speeds to transmit biometric data. Aadhaar has, so far, made no mention of who will bear the cost of biometric PoS readers and ATMs.

Further, while the RBI has adopted a combination of 'chip and PIN' authentication for existing customers and biometric checks for unbanked cardholders, the real challenge is in the acceptance devices. The procurement of new equipment to facilitate these biometric checks have huge cost implications on banks, who will ultimately transfer the burden on to customers. Banks will ultimately have to divert funds for developing their businesses to facilitate new infrastructure. Banks, who are already reeling under the burden of high operating costs, and customers, who are already burdened by the array of "convenience charges" imposed by banks for online transfers, SMS-alerts etc., are understandably wary of the implications of this proposal.



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While there is a need for a much stronger authentication mechanism and customer security - such a proposal, without adequate capital for such massive infrastructure requirements, will result in a high cost burden for the entire banking system - which will ultimately have to be borne by the hundreds of millions of account holders in the country.

Additionally, even though the Aadhaar-based authentication was launched by several banks through biometric ATMs between 2004 and 2007, it did not work and its implementation has so far proved costly for the banks as well as the customers. The ATMs could not authenticate the biometrics of many underprivileged citizens, and therefore, had to be discarded. Therefore, there is a need to conduct adequate feasibility tests before such a proposal is implemented.

The purpose of Aadhaar number should be to reduce the costs of the final customers, and bring them within the institutional banking framework. Yet, there are constant complaints by many bankers that the technology costs are extremely high, and must be borne by the customer. Further, the Aadhaar programme has not provided the costs of the biometric readers, which is essential for the delivery of these services to the people. This implies that the UIDAI hopes to pass on these costs to the banks. Also, it has been brought to my knowledge, through various media reports, that the banks have to pay UIDAI for the verification and authorization of every transaction and that this revenue is a part of their business plan. The final cost burden for this will be on the shoulders of the common man.

Therefore, in the interest of the millions of banking consumers, and especially in light of the recent Supreme Court ruling on the Aadhaar card, I urge you to reconsider this proposal - in the interest of the millions of banking consumers - present and future - and ensure their interests are safeguarded.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

True copy

Dr. Raghuram Rajan
Governor
Reserve Bank of India
Central Office
Mumbai 400 001